IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

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WRIT PETITION NO : 28262 of 1995

Between:

1. D. Eswarappa, S/o. Veerappa,
   R/o Kalabgur, Sanga Reddy (M), Medak District.
2. D.Parvathamma, W/o. Eshawarappa,
   R/o Kalabgur, Sanga Reddy (M), Medak District.
3. D. Veerappa (Died) per L.R. (Petitioner No.1),
   R/o Kalabgur, Sanga Reddy (M), Medak District.
4. D. Eswaramma (Died) per L.R. (Petitioner No.1),
   R/o Kalabgur, Sanga Reddy (M), Medak District.
5. D. Nagamma, W/o. Veerappa,

   R/o Kalabgur, Sanga Reddy (M), Medak District.
6. D.Chandrakala, D/o. Eswarappa,
   R/o. Kalabgur, Sanga Reddy (M), Medak District.
7. D. Suryakala, D/o. Eswarappa,
   R/o Kalabgur, Sanga Reddy (M), Medak District.
8. D. Arunajyothi, D/o. Eswarappa,
   R/o. Kalabgur, Sanga Reddy (M), Medak District.

..... PETITIONERS

AND

1. Spl. Cadre Dy. Registrar, Medak Dist. Coop. Central Bank,
   Hd.Qrs., Sanga Reddy, Medak District.
2. Medak Dist. Coop. Central Bank,

Sangareddy Branch, rep by its Manager
3. Primary Agrl. Coop.Society, Kalbagur,

Sangareddy (M), Medak District, rep. by its Paid Secretary. .
4. K. Nagappa, S/o.Sangappa, Secretary, Primary Agricultural

Coop.Society Ltd., Kalabgur, Sangareddy Mandal, Medak District.
(R4 is impleaded as per court order dt. 29-3-96. in WPMP 5165/96)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ or order, direction, one in the nature of writ of Mandamus, i) declaring the impugned proceedings in Case No. Nil, dt. 15-5-95 (Annexures P1-P7) issued u/s 71 of Act 7/1961 and consequent demand notices (Annexures P8-P11) of the respondent No.1 as illegal and liable to be quashed; ii) further declaring the harassment of the respondents caused to the petitioners as arbitrary, illegal and violative of fundamental rights; iii) Costs be awarded to the petitioners.

Counsel for the Petitioners: MR.K.RAMAKRISHNA REDDY

Counsel for the Respondent Nos.1 to 3: MR. P.M GOPALA RAO

Counsel for the Respondent No.4: MR.NANDIGAM KRISHNARAO

The Court made the following :

THE HON'BLE SRI JUSTICE N.V.RAMANA

Writ Petition No.28262 of 1995

ORDER:

Questioning the proceedings dated 15.05.1995, of the first respondent issued under Section 71 of A.P. Co-operative Societies Act, 1961 (for brevity, 'the Act'), the petitioners filed the present writ petition contending that the impugned proceedings were issued without issuing any notice and without conducting any enquiry as required under Section 71 of the Act.

2. The petitioners claim to be members of the third respondent-society. They had taken loans from the third respondent-society for the purpose of agriculture, and it is their case that they repaid the loan amounts to the third respondent-Society, which issued receipts acknowledging the payments, and also "No Due Certificates".

3. The first petitioner, it is stated, was elected as President of the third respondent-society, and his term expired in the month of January, 1995. The Paid Secretary and some other officials of the third respondent-society were involved in financial misappropriations and irregularities. Therefore, the records/documents relating to the finances of the third respondent-society were kept in the house of the first petitioner, for safe custody so as to avoid mischief and tampering of records by those

involved in the misappropriations. The petitioners state that taking advantage of the absence of the first petitioner in his house, those involved in financial misappropriation, had forcibly entered the house of the first petitioner and took away the records of the third respondent-society from the house of the first petitioner. Thereafter, the said officials manipulated the records so as to appear that the petitioners did not repay the loan amounts. Thereafter, the first respondent issued the demand/distraint order in Form No.II for attachment of immovable properties of the petitioners' family without issuing any notice and without conducting any enquiry as required under Section 71 of the Act, which is illegal and arbitrary. The petitioners, in support of their contention, that an order passed without issuing any notice and without conducting any enquiry as provided under Section 71 of the Act, cannot be sustained, placed reliance on the judgement of this Court in ***M. Chennakesava Reddy v. Dvl. Co-op. Officer***. Hence, the writ petition.

3. Contesting the claim of the petitioners, respondent 1, 2 & 3 filed counter-affidavit denying the allegations made in the affidavit filed in support of the petition, and contended that petitioner Nos.2 to 8 are no other than the family members of the first petitioner, and all of them obtained crop loans from the third respondent-society in the year 1993, except petitioner 4, who obtained the loan in the year 1984, by creating charge over their immovable properties. Having obtained the loans, the petitioners never paid any amount, and committed default in repayment of the crop loans, and therefore, awards against the petitioners were passed on 15-5-1995, which were questioned by the petitioners on untenable grounds before the authority concerned.

The counter further contends that as the petitioners committed default in repayment of the loans obtained by them in the year 1993 and 1984, the officials of the third respondent-society issued notice, and when it was tried to be served on the petitioners for conducting enquiry, the petitioners refused to receive the same, and therefore, the notices were affixed on 1-11-1994 on the door of the house of first petitioner, wherein the date of enquiry and hearing was fixed as 14-11-1994. The petitioners in spite of affixing the notice on the door of their house, neither appeared for the enquiry nor submitted any reply to the notice. Thereafter, after conducting a summary enquiry, and after verification of the loan ledger extracts available in the third respondent-society, the first respondent determined the amounts payable by the petitioners and issued certificates of recovery on 15-5-1995, and the copies of

the said certificates, were also supplied to the petitioners on 22-11-1995. Even after service of the copies of the said certificates, the petitioners failed to give any reply nor repaid the amounts due by them, and to delay the recovery proceedings filed the present writ petition.

During the pendency of the writ petition, the fourth respondent, who is the Secretary of the third respondent-society came on record as per orders of this Court passed in W.P.M.P. No. 5165 of 1996 on
29-3-1996. He filed counter-affidavit stating that the first petitioner was elected as a President to the third respondent-society and during his tenure, he misused his power by sanctioning loans benami and also in the names of his family members, including himself and having availed the loan, they did not repay the same. He further stated that prior to the expiry of his term, the first petitioner granted the above said loans, and he also misappropriated the funds of the third respondent-society. Even in the year 1998, a surcharge order was passed on 26-11-98 by the Deputy Registrar of Co-operative Societies, Sanga Reddy Division. He denied the other allegations made in the affidavit filed in support of the writ petition, and contended that the recovery proceedings initiated against the petitioners are lawful and are in the interest of the third respondent-society, and prayed for dismissal of the writ petition.

Later on, an additional counter affidavit was filed on behalf of respondents 1,2 & 3 in the year 1997 contending that after filing the writ petition the third respondent-society conducted a re-enquiry into the matter, and in the re-enquiry it was found that the petitioners are not due any amount to the third respondent-society as they had repaid the loan amounts to the paid Secretary from time to time, and therefore, in the meetings of the third respondent-society held on 29-1-1997 and
12-9-1997 it was resolved that the petitioners are not liable to pay any amount to the third respondent-society.

Refuting the averments made in the above additional counter affidavit filed on behalf of respondents 1 to 3, the present President of the third respondent-society filed a notarized affidavit on 15-12-1998 stating that the contents in the additional counter affidavit, allegedly filed on his behalf and others, are denied, and contended that the local MLA and his followers had forcibly obtained his signatures on blank papers to fabricate the additional counter-affidavit, and denied the contents of the

additional-affidavit and the resolutions said to have been passed by them, and contended that the petitioners having taken loans, have never paid any amounts to the third respondent-society till date. Hence, he prayed to reject the additional counter-affidavit allegedly filed on his behalf and others, and to place reliance on the counter-affidavit filed at the first instance.

Heard the arguments of both the counsel at length.

There can be no dispute that before issuing certificate under Section 71 of the Act, a notice and enquiry has to be conducted, and any order passed without issuing any notice and without conducting any enquiry cannot be sustained. In the instant case, the first respondent did issue notice to the petitioners before passing the impugned orders. It is stated by the respondent, when an attempt was made by the first respondent to serve notice on the petitioners, the petitioners have refused to receive the same, and in those circumstances, the notice was affixed to the door of the house of the petitioners, wherein the date and time of enquiry was notified. In spite of the affixation of notice, the petitioners neither appeared for the enquiry nor submitted any reply to the notice, and therefore, the first respondent conducted a summary enquiry, and determined the amount payable by the petitioners to the third respondent-society. Therefore, the petitioners cannot be allowed to contend that no notice or enquiry was conducted by the respondents before issuing the impugned proceedings. Be that as it may, the petitioners have not challenged the order passed by the first respondent determining the amounts payable by them, in appeal, and the said order having become final, the first respondent issued the impugned Recovery Certificate, which cannot be said to be illegal or arbitrary. Though the petitioners contended that they repaid the entire loan amounts, and “No Dues Certificates” were also issued, the same is disputed by the present President of the third respondent-society, and this apart, to support this contention the petitioners have not placed any material before the Court, much less the receipts evidencing the repayments nor the “No Dues Certificates” said to have been issued by the third respondent-society.

Since the order passed by the first respondent determining the amounts payable by the petitioners to the third respondent-society has become final as the same was not challenged in appeal, no exception can be taken to the impugned Recovery Certificate, which has been issued in pursuance of the said determination,

and more so for the reasons mentioned above.

There is no merit in the writ petition, and the same is accordingly dismissed.

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N.V. RAMANA, J

4th November 2004

Kvrk/Ksr

To

1. The Special Cadre Deputy Registrar, Medak Dist. Coop. Central Bank, Head Quarters, Sanga Reddy, Medak District.
2. The Manager, Medak Dist. Coop. Central Bank, Sangareddy Branch, Sangareddy
3. The Paid Secretary, Primary Agrl. Coop.Society, Kalbagur,

Sangareddy(M),MedakDistrict.

4. Two CD copies.

THE HON'BLE SRI JUSTICE N V RAMANA

WRIT PETITION NO. 28262 OF 1995

4TH NOVEMBER 2004

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